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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Application of PacifiCorp  
dba Utah Power & Light Company for  
Approval of Changes to its Electric Service  
Schedules

PacifiCorp's Emergency Petition for Stay of  
Civil Penalty Imposed by Commission Order  
No. 29034

PAC-E-02-1

**PACIFICORP'S EMERGENCY  
PETITION FOR STAY OF CIVIL PENALTY**

**COMES NOW** PacifiCorp, dba Utah Power & Light Company (“PacifiCorp” or the “Company”), by and through its attorneys of record and pursuant to Commission Rules of Procedure 324 and 333 (IDAPA 31.01.01.324, 333) and Idaho Code § 61-626, and petitions this Commission for an emergency stay of the \$1,087,720 civil penalty assessed in Order No. 29034 (“Order”).<sup>1</sup> As described below, stay of the effectiveness of the civil penalty imposed in the Order is warranted because enforcement of that penalty is contrary to the law

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<sup>1</sup> Simultaneous with this Petition for Stay, PacifiCorp is also filing a Petition for Reconsideration of the Commission’s determination in Order No. 29034 that PacifiCorp failed to provide adequate notice to its customers in violation of Rule 102 of the Commission’s Utility Customer Information Rules (IDAPA 31.21.02.102) (“Rule 102”) and its finding that a \$20 per customer credit, or a total of \$1,087,720, is an appropriate penalty under Idaho Code § 61-701 *et seq.* for said violation.

and the public interest and may result in confiscation and irreparable loss to PacifiCorp.<sup>2</sup> *Cf. Joy v. Winstead*, 215 P.2d 291, 293 (1950) (due process requires courts to stay Commission orders if irreparable confiscation probable).

On June 7, 2002, this Commission issued its Order No. 29034. On the basis that the Company failed to provide Rule 102 bill-stuffer notice, the Order requires that the Company provide each of its customers a credit of \$20 within 90 days of the date of the Order, or by September 5, 2002. The Order also provides that the Company “may prorate the credit over this 90-day period to avoid cash flow concerns.” Order No. 29034 at 23.

As noted above, the Company is petitioning for reconsideration of the Commission’s decisions respecting the alleged Rule 102 violation, including its decision to impose a civil penalty for violation of that Rule. Absent a stay of the \$20 per customer credit, the Company will be forced to issue credits to customers despite the fact that the appropriateness of that penalty has been challenged on several grounds. Most significantly, the \$20 per customer credit violates Idaho Code § 61-712, which requires that all penalties “shall be paid into the state treasury to the credit of the general fund.”

Moreover, if the civil penalty is not stayed and reconsideration is ultimately granted, recovery of the credited amounts from all customers is unlikely, resulting in irreparable loss to PacifiCorp. Not only is it possible that the Company will suffer injury under those circumstances, providing credits to customers while resolution of the issue of their validity is ongoing creates the risk that customers receiving the benefit of the credit will not be the same

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<sup>2</sup> PacifiCorp’s Emergency Petition for Stay is limited to that portion of Order No. 29034 imposing the \$1,087,720 civil penalty. By so limiting its petition, PacifiCorp understands that the remainder of the Order is not stayed. *See* Idaho Code § 61-626(3) (petition for reconsideration does not excuse company from complying with or obeying a Commission order unless stayed by Commission); IDAPA 31.01.01.333 (petition for reconsideration does not excuse compliance with nor stay effectiveness of any Commission order, unless otherwise ordered).

as those customers who may ultimately be called upon for its refund. Such a result would be contrary to the public interest.

To comply with the 90-day customer-credit deadline imposed by the Commission's Order, PacifiCorp will need to begin preparing to implement that credit **no later than July 11**. For that reason, PacifiCorp respectfully requests that the Commission issue an immediate stay of that portion of its Order No. 29034 requiring the Company to provide its individual customers \$20 credits pending resolution of the issues presented in PacifiCorp's Petition for Reconsideration.

PacifiCorp submits that the interests of fairness to it and to its customers weigh in favor of granting its Emergency Petition for Stay.

DATED: June 28, 2002.

Respectfully submitted,

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Of Attorneys for PacifiCorp dba Utah  
Power & Light Company